IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 435 of 2004

to

FIRST APPEALNo 457 of 2004

with

CIVIL APPLICATION No 1435 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL GIRISHBHAI BACHUBHAI

Versus

SPL.LAQ OFFICER

Appearance:

1. First Appeal No. 435 of 2004

MR AJ PATEL for Petitioner No. 1

MR AD OZA,GP for Respondent No. 1-2

2. Civil Application No. 1435 of 2004

MR AJ PATEL for Petitioner No. 1
..... for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 17/03/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE K.S.JHAVERI)

1. This group of appeals is filed against the award made by the Reference Court i.e. Extra Assistant Judge, Mehsana dated 16th August 2001 in Land Acquisition Reference Cases No. 144 of 1995 to 167 of 1995.

2. The appellants are the original claimants/ owners of agricultural lands situated at village Daran, Taluka Kadi, District: Mehsana. Since their lands were required for the implementation of public purpose, namely construction of Narmada Project, at the instance of Executive Engineer, Construction Division, Kadi, who is respondent no.2 herein, the respondent no.1 initiated acquisition proceedings under the provisions of Land Acquisition Act, 1894 (for short 'the Act'). Section 4 notification was published on 1st August 1991 followed by notification under section 6 of the act dated 27th Feb.,1992. On completion of all the formalities required to be observed under the provisions of the Act, respondent no.2 calculated the compensation to be paid to the claimants at Rs. 3.30 per sq.mt. against the claim of appellants at Rs. 30/- per sq.mt.

3. Being aggrieved by the order passed by the Special Land Acquisition Officer, the claimants approached the Reference Court by filing reference cases under section 18 of the Act. The learned Extra Assistant Judge, Mehsana, after considering the material placed before him in the form of oral as well as documentary evidence, came to the conclusion that the award made by the Special Land Acquisition Officer was hopelessly inadequate and it was required to be enhanced substantially. The learned Judge, therefore, increased the compensation by Rs. 23.30 per sq.mt. i.e. in all Rs. 26.60 per sq.mt. Over and above that, the learned Judge also granted benefits under section 23(1-A) and 23(2) of the Act. The learned Judge, however, declined to grant interest on the monetary benefit awarded under the aforesaid sections in view of the judgment delivered in the case of Special Land Acquisition Officer, Bharuch

Versus Jagdishbhai, reported in 1997(2) GLH (UJ 17-27).

4. The appellants in these appeals have challenged only the refusal of interest part and have not claimed any additional compensation i.e. the appellants have challenged the directions of the trial court in subpara 6 of para 21 on page 17 which read as under:

> "(6): Further it is ordered that in view of the case of Special Land Acquisition Officer, Bharuch Vs. Jagdishbhai, reported in 1997(2) GLH (UJ-17) 27, the applicants/ claimants are not entitled to get the interest on the amount which is awarded under Section 23(2) and 23(1-A) of the Land Acquisition Act also not entitled to get 12$ price difference on the amount so awarded under section 23(2) and 23(1-A) of the Land Acquisition Act."

5. We have heard Mr.J.M.Patel for Mr.A.J.Patel, learned Counsel for the appellants and Mr. A.D.Oza, learned GP for the respondents.

6. Mr.Patel has drawn our attention to the judgment dated 31.7.2003 rendered by the Division Bench of this Court in First Appeals No. 2289 to 2306 of 2002 and in particular to para 3 of the said judgment. The contents of the said para make it clear that Mr. AJ Patel, learned Counsel appearing for the appellants of those appeals had given up the claim for enhanced compensation in view of several judgments delivered by this Court in other matters. Similarly in the present case, Mr.J.M.Patel gives up his claim for the enhanced compensation. Mr. Patel, however, submits that the direction contained in sub-para (6) of para 21 of the trial Court's judgment is erroneous and it is required to be set aside in view of the decision of the Apex Court rendered in the case of Sunder Vs. Union of India, reported in 2001(3) GLH 446. The Apex Court in the said decision has explained the grant of benefits which can be awarded under section 23(1-A) of the Act as well as the grant of interest on such amount as the said amount forms part of the award itself. The Apex Court has clarified the position further by saying that:

> "We make it clear that the compensation awarded includes not only the total sum arrived at as per subsection (1) of S. 23, but the remaining subsections thereof as well. It is, thus, clear from S. 34 that the expression 'awarded amount'

would mean the amount of compensation worked out in accordance with the provisions contained in S. 23 including all the subsections thereof."

7. Mr. Patel has also drawn our attention to the judgment of this Court rendered in First Appeals No. 1699 of 2002 to 1711 of 2002 dated 9.10.2003 and the judgment of this Court in another group of First Appeals No. 2226 of 2002 to 2239 of 2002 taking the same view.

8. In view of the aforesaid ratio laid down by the Apex Court, this direction of the Reference Court is erroneous and is required to be quashed and set aside. We, therefore, quash and set aside the said direction and direct that the respondents shall pay interest in accordance with section 28 of the Act on the monetary benefits made available to the appellants under the provisions of section 23(2) and 23(1-A) of the Act.

9. In the result, these First Appeals are partly allowed with no order as to costs.

Civil Applications accordingly stand disposed of.

Office to place a copy of this judgment in all the above matters.

(Kshitij R.Vyas,J.)

(K.S.Jhaveri,J.)

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